

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

ORR WATER DITCH CO., *et al.*,

Defendants.

Case No. 3:73-cv-00018-LDG

ORDER

In Re: Nevada State Engineer Ruling
No. 5747

Petitioner Pyramid Lake Paiute Tribe has suggested (#63) that this matter be remanded to the State Engineer for further proceedings consistent with the decision of the Ninth Circuit in *United States v. Orr Water Ditch Co.*, 600 F.3d 1152 (2010). The State Engineer and Grand Slam Enterprises, LLC oppose the suggestion (## 64, 65).

In its decision, the Ninth Circuit ruled that this Court has jurisdiction to hear the Tribe's appeal of the State Engineer's ruling. The Circuit Court observed:

The district court was asked to decide only one question on appeal: Will the Engineer's allocation of groundwater rights adversely affect the Tribe's rights under the Decree? If the court concludes that the allocation will have an

1 adverse effect on the Tribe's decreed rights, it will instruct the Engineer to
2 reduce the amount of allocated groundwater rights by an amount necessary
3 to eliminate that effect. If the court concludes that the allocation will not
adversely affect the Tribe's decreed rights, it will simply affirm the Engineer's
ruling.

4 The Circuit Court recognized that it is the duty of this court to resolve the question raised by
5 the Tribe in its appeal: whether the Engineer's allocation of groundwater rights in Ruling
6 5747 will adversely affect the Tribe's rights under the Decree? The Court will not pre-judge
7 that issue, and remand to the State Engineer, merely because the Circuit Court also held
8 that "the Orr Ditch Decree forbids groundwater allocations that adversely affect the Tribe's
9 decreed rights to water flows in the river." This additional holding does not, as a matter of
10 law, establish that the State Engineer's allocation of groundwater rights in Ruling 5747
11 adversely affected the Tribe's rights under the Decree.

12 As both the State Engineer and the Tribe have agreed to stay this matter pending
13 resolution of the Tribe's Petition for Judicial Review that it filed in state court, the court will
14 not enter a briefing schedule, but will stay any further consideration of this matter.

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16 Accordingly, for good cause shown,

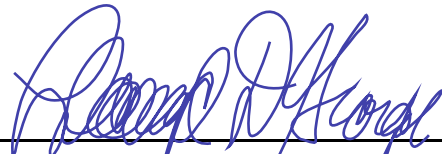
17 THE COURT **ORDERS** that the Pyramid Lake Paiute Tribe's Suggestion of Further
18 Remand (#63) is DENIED;

19 THE COURT FURTHER **ORDERS** that the joint suggestion of the Pyramid Lake
20 Paiute Tribe and the State Engineer to stay this matter is GRANTED. This matter is
21 STAYED pending the Second Judicial District Court's resolution of the Pyramid Lake
22 Paiute Tribe's Petition for Judicial Review;

23 THE COURT FURTHER **ORDERS** that within 90 days, and every 90 days
24 thereafter, the Pyramid Lake Paiute Tribe shall file a status report regarding its Petition for
25 Judicial Review before the Second Judicial District Court. Further, the Pyramid Lake
26

1 Paiute Tribe shall promptly notify the Court of the Second Judicial District Court's resolution
2 of the Pyramid Lake Paiute Tribe's Petition for Judicial Review.

3 DATED this 27 day of August, 2010.



Lloyd D. George
United States District Judge